IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 676 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

---

GSRTC

Versus

SURESHBHAI MAGANBHAI VAGHELA

---

Appearance:

MR ASHISH M DAGLI for Petitioner No. 1

MR AK CLERK for Respondent No. 1

---

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 01/04/2003

ORAL JUDGEMENT

Heard learned advocate Mr. Ashish M. Dagli for the petitioner and Mr. A.K.Clerk for the respondent workman.

Rule. Service of rule is waived by Mr. A.K. Clerk, learned advocate appearing for the respondent.

In the present petition, the petitioner corporation has challenged the order dated 26th August, 2002 passed by the Conciliation Officer wherein the Conciliation Officer has rejected the approval application filed by the petitioner corporation under section 33-2-B of the I.D. Act, 1947. The respondent workman who was working as a conductor with the petitioner corporation. While he was on duty on bus enrouting from Ahmedabad to Borsad and during the checking, it was found that the respondent has committed misconduct of serious nature of reissuing of tickets and it was further found that from one passenger, he collected fare in advance but the ticket was not issued. For the said misconduct, departmental proceedings were initiated against the respondent and on conclusion since the respondent is daily wager, punishment of ten days salary was imposed by order dated 18.10.1999. The reviewing authority has reviewed the case by show cause notice dated 4.1.2000 which came to be replied on 8.1.2000. The reviewing authority has, after considering the seriousness of the misconduct, passed the order of dismissal by giving one month salary in advance. Pursuant to the order of dismissal, an application for approval under section 33(2)(b) of the Act came to be filed which was rejected by the authority by order dated 26.8.2002 by the conciliation officer and, therefore, present petition has been filed.

Learned advocate Mr. Dagli appearing for the petitioner corporation has submitted that the Conciliation Officer has committed gross error in rejecting the approval application; that the conciliation officer is having no power to consider the merits of the matter and he is also having no power to consider the question of punishment and yet, in the facts of the present case, the Conciliation Officer has consider the merits as well as the question of punishment and on that basis, approval application has been rejected. It was, therefore, submitted by him that the Conciliation Officer has committed gross error in rejecting the approval application.

On the other hand, learned advocate Mr. Clerk appearing for the respondent workman has submitted that the Conciliation Officer has rightly considered the approval application and has rightly relied upon the decision of the Apex Court in which it has been held that

while deciding approval application, the conciliation officer is having power to consider the prima facie merits as well as mala fide and victimization by the petitioner corporation. He submitted that the petitioner corporation has not complied with ection33(2)(b) of the I.D. Act which is mandatory and, therefore, the conciliation officer has rightly rejected the application for approval.

During the course of submissions, both the learned advocates intended to put final end and, therefore, both the learned advocates have given consent before this Court that, looking to the misconduct in question, if this Court is of the view that some more appropriate punishment is required to be imposed, then, the court may consider the case and pass appropriate order of relief in exercise of the powers under section 11-A of the Industrial Disputes Act, 1947. Both the learned advocates are relying upon the judgment of the apex court reported in case of Workmen of Bharat Fritz Werner (P) Ltd. v. Bharat Fritz Werner (P) Ltd. reported in 1990(1) Judgments Today (SC) page 305.

I have considered the submissions made by the learned advocates for the parties. I have also perused the order passed by the Conciliation Officer rejecting the approval application as well as the aforesaid decision of the apex court.

Looking to the decision of the Hon'ble apex court in case of Workmen of Bharat Fritz Werner (P) Ltd. v. Bharat Fritz Werner (P) Ltd. reported in 1990(1) Judgments Today (SC) page 305, it is clear that with the consent of the parties, this court can exercise the powers under section 11-A of the Industrial Disputes Act,1947 while examining the legality, validity and propriety of the order passed by the below authority. The misconduct which has been committed by the workman while working as a conductor was to the effect that while he was on route on 21.9.1998 from Ahmedabad to Borsad, at that time, his bus was checked by the checking staff and at the relevant time, it was found that the respondent has reissued the ticket to one passenger travelling from Ahmedabad to Borsad and the fare collected comes to Rs.27.00. Second charge levelled against the workman is that from one passenger travelling from Ahmedabad to Anand, who was having luggage of 60 kg. and from that passenger, fare and luggage charges of Rs.27.80 were collected but the passenger ticket and luggage ticket has not been issued by the respondent workman to the said passenger and on the basis of the said misconduct,

departmental proceedings were initiated and punishment of deduction of ten days salary was imposed by order dated 18.10.1999 and the reviewing authority has, after issuing show cause notice for reviewing the punishment, imposed punishment of dismissal from service and the approval application for such punishment in review has been rejected by the conciliation officer.

Before considering the merits of the matter, it is necessary to refer to the observations made by the apex court in case of Workmen of Bharat Fritz Werner (P) Ltd. v. Bharat Fritz Werner (P) Ltd. reported in 1990(1) Judgments Today (SC) page 305. The observations made by the apex court in para 16, 17 are reproduced as under:

"16. The learned Judges were of the view that the said acts of misconduct were not such as to deserve extreme penalty of dismissal and have directed that these workmen should be taken back to duty but with one half of the back wages. The learned Judges considered denial of one half of the back wages to the workmen as a sufficient punishment for the acts of misconduct committed by them.

17. The aforesaid directions have been given by the High Court while exercising the powers which are exercised by the industrial tribunal in view of the joint memo dated June 22, 1984 submitted by both the parties, whereby it was requested that the Court may decide the entire matter without remitting it to the Tribunal and grant appropriate relief finally in accordance with law. Moreover, in view of the provisions contained in section 11-A of the Act which empowers the industrial tribunal to go into the question whether the order of discharge or dismissal passed against a workman is justified or not and permits the tribunal to set aside the order of discharge or dismissal as the circumstances of the case may require, it was open to the High Court to consider what would be adequate punishment for the misconduct found to have been committed by these workmen and take the view that the acts of misconduct found proved against these five workmen were not such as to warrant dismissal and denial of one half of the back wages for the period of about six years was adequate punishment for the misconduct found to have been committed. We do not find any

infirmity in the aforesaid view expressed by the appellate bench of the High Court. The question which still remains to be considered is whether, in the facts and circumstances of the case, the appellate bench of the High Court was justified in directing reinstatement of these five workmen."

The conciliation officer has considered one important fact that initially, punishment was imposed by the competent authority upon the respondent workman for deducting ten days salary from the wages of the respondent by order dated 18.10.1999. Said punishment remained in tact and it was in fact executed and the ten days salary was deducted from the salary of the petitioner. Thereafter, the reviewing authority has reviewed the case by show cause notice dated 4.1.2000 which came to be replied on 8.1.2000. The reviewing authority has, after considering the seriousness of the misconduct, passed the order of dismissal by giving one month salary in advance. Pursuant to the order of dismissal, an application for approval under section 33(2)(b) of the Act came to be filed which was rejected by the conciliation officer by order dated 26.8.2002. Therefore, in light of these facts, the question is whether the reviewing authority is having power under clause 9 of the ST Procedure to enhance the punishment or not because clause 9 of the ST Procedure is not providing for enhancement to the reviewing authority, meaning thereby, the reviewing authority has no power to enhance the punishment while exercising the review powers for want of specific provisions to that effect under clause 9 of the ST Procedure. Power to enhance the punishment is penal in nature and for that, some specific provisions are necessary and in absence of such specific provisions, the Court is required to consider the fact that the reviewing authority has no power to enhance the punishment. This aspect has been examined by this Court in the matter of GSRTC v. DL Patel reported in 2003 (1) GLR page 348.

In view of that, the conciliation officer was right in appreciating the merits of the matter and the contention raised by the workman before the conciliation officer has not been examined by the petitioner Corporation Various contentions were raised by the respondent workman before the respondent corporation that while passing the punishment order, principles of natural justice were not followed, no reasonable opportunity was given by the corporation to the workman, no opportunity

to examine the witness has been given and the findings recorded by the reviewing authority have also not been given to the respondent workman. No answer has been given by the corporation to such contentions raised by the workman and, therefore, ultimately the conciliation officer has rejected the approval application. The effect of rejection of an application for approval would be to the effect that the order of dismissal would automatically become null and void ab initio means non-est and as a consequence thereof, the workman concerned would become entitled to all the consequential relief as deemed to be in continuous service for all purpose. However, in view of the consent given by both the learned advocates and also in view of the request made by them jointly for exercising the powers under section 11A of the I.D. Act, I have considered the misconduct referred to above. Looking to the misconduct, it is clear that the respondent has committed misconduct of reissuance of the ticket to one passenger and from one passenger, after recovering the amount of fare, not issued the ticket. Past record of the respondent workman has not been produced before this court. The respondent was a new employee of the corporation. However, considering the seriousness of the misconduct committed by the respondent, some more punishment is required to be imposed. Considering the over all facts and circumstances of the case, and also considering that the approval application has been rejected by the conciliation officer, according to my opinion, in view of the consent given by both the parties, this is the fit case for exercise of the powers under section 11A of the I.D. Act in view of the decision of the apex court referred to above and it would be just and proper and would also met ends of justice if four annual increments of the respondent workman are ordered to be stopped with future effect, by way of punishment. It is necessary to clarify that because of the rejection of the approval application as per the view taken by the apex court that the order of dismissal is non-est and as a consequence thereof, the workman is entitled to receive full back wages from the date of dismissal 11thJune, 2002 till the date of his actual reinstatement in service, the respondent is entitled for regular full backwages from 11thJune, 2002 till the date of his actual reinstatement and if it is also denied, that being also a sufficient punishment and the corporation would not be suffering any financial burden. Therefore, considering the facts and circumstances of the case, according to my opinion, the workman is not entitled to any amount of wages from the date of dismissal 11th June, 2002 till the date of actual reinstatement and the respondent is required to suffer or

undergo punishment of stoppage of four annual increments with recurring effect. Therefore, accordingly, present petition is partly allowed and the rule is made absolute accordingly with no order as to costs.

However, considering the request made by the learned advocate Mr. Clerk that some suitable directions may be issued to the petitioner corporation for reinstatement so that the respondent is reinstated within some reasonable period. Learned advocate Mr. Dagli appearing for the petitioner corporation has submitted that the petitioner will be reinstated in service within some reasonable period if some suitable directions to that effect are issued by this court.

Considering the submissions made by the learned advocates for the parties, it is directed to the petitioner corporation to reinstate the respondent workman with continuity of service and without any back wages with punishment of stoppage of four annual increments with future effect within four weeks from the date of receipt of copy of this order.

Therefore, accordingly, present petition is partly allowed and the rule is made absolute accordingly with no order as to costs.

Dt. 1.4.2003 (H.K. Rathod,J.)

Vyas